

REMARKS

These remarks are responsive to the Final Office Action mailed March 2, 2010 (“Action”). Reconsideration and allowance of the instant application are respectfully requested.

Telephonic Interview

Preliminarily, applicants wish to thank the Examiner for the courtesies extended to their representatives during the telephonic interview on May 17, 2010. The following remarks include Applicants’ substance of interview pursuant to MPEP § 713.04. No exhibits were shown and no demonstrations were conducted. Applicants discussed whether the finality of the rejection was premature and the rejection of claim 1 in view of US 2004/0088242 to Ascher et al. No agreement was reached as to the allowability of the claims, but that the Examiner would reconsider the propriety of the rejection if Applicants submitted a request for reconsideration.

Improper Final Rejection

Applicants respectfully submit that the finality of the rejection is improper. The response filed December 3, 2009 (“Previous Response”) amended the subject matter from dependent claims 5 and 6 into independent claim 1, and made similar amendments to the other independent claims. The Non-final Office Action mailed September 3, 2009 rejected claims 5 and 6 as allegedly being anticipated by Rosen et al. (US 2003/0050879). When making the rejection final, rather than continuing to rely on Rosen, the Action newly cited Ascher. The Action also indicates that the Office is applying a new ground of rejection. *See* Action, p.10. Because the Office already had opportunity to search and consider claims 5 and 6, the finality was not necessitated by Applicants’ amendment. Thus, contrary to the statements made in the Action, the finality of the rejection was not necessitated by the amendment to claim 1. Similar amendments were made to independent claims 13 and 19 in the Previous Response, and hence the finality of the rejection was not necessitated by the amendments to claims 13 and 19. Thus, the Office has improperly made the rejection final when the claims have not been twice rejected using the same cited references. Applicants respectfully request the finality be withdrawn to give Applicants fair opportunity to respond to the newly cited Ascher reference.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-4, 7-14, 16-23, and 26-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosen et al. (US 2003/0050879) in view of Martin (US 7,089,206) in view of Ascher et al. (US 2004/0088242).

Applicants respectfully disagree.

Claim 1 is drawn to a distributed trading system that includes “a match engine . . . configured specifically for a particular class of futures contracts and receives validated order messages only when they are related to the particular class of futures contracts, wherein the particular class of futures contracts comprise a contract cluster having a unique contract identification representative of a single tradable instrument, and wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches.” The Action concedes that Rosen and Martin fails to disclose these claim features (*see* Action, p. 3), and asserts that figure 3 and its description in Ascher disclose the missing claim elements. Applicants respectfully disagree.

The cited lines of Ascher do not disclose the concept of requiring a match engine to consider two or more contracts simultaneously to determine matches in response to identification of contract clusters. Contrary to the Action’s assertion, Ascher merely relates to a system that credits and debits accounts of market participants based on whether a market participant adds or removes liquidity from a futures market. *See* Ascher, Abstract, ¶49. Ascher does not use the term cluster, nor does Figure 3 of Ascher disclose or suggest the concept of requiring a match engine to consider two or more contracts simultaneously to determine matches in response to identification of contract clusters. As such, the Action has incorrectly asserted that combining Ascher with the combination of Rosen and Martin would disclose all elements recited in claim 1. Applicants respectfully submit that the claim 1 is allowable over the cited combination and request withdrawal of the rejection under 35 U.S.C. § 103.

The other independent claims are allowable at least for reasons analogous to those given in support of claim 1.

The pending claims that respectively depend on the independent claims are allowable at least due to dependence on an allowable claim.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance. Favorable reconsideration of this application is respectfully requested. The Examiner is invited to contact the undersigned should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,
BANNER & WITCOFF, LTD.

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By:/Christopher M. Swickhamer/
Christopher M. Swickhamer
Registration No. 59,853
BANNER & WITCOFF, LTD.
10 South Wacker Drive, Suite 3000
Chicago, IL 60606
Telephone: 312-463-5000
Facsimile: 312-463-5001